

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2091 of 1996

with

SPECIAL CIVIL APPLICATION NO. 5343 of ~1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

HEIRS AND LEGAL REPRESENTATIVE OF DECEASED SOMAJI
NATHAJI & OTHERS

Versus

COMPETENT AUTHORITY AND DY COLLECTOR (ULC)

Appearance:

Shri P.M. Bhatt, Advocate, for the Petitioners
(in both matters)

Shri U.R. Bhatt, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/08/96

ORAL JUDGEMENT

Both these petitions are directed against the common order passed by the Competent Authority at

Ahmedabad (respondent No. 1 in each petition) on 29th October 1993 as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 in each petition) on 16th January 1996 in Appeal No. Ahmedabad-13 of 1994. Since the petitioners in both the petitions are relatives and since a common order was passed by respondent No. 1 and since the petitioners of both the petitions carried the matter by means of a common appeal and since common questions of law and fact are found arising in both these petitions, I have thought it fit to dispose of both these petitions by this common judgment of mine.

2. It is not necessary to set out in detail the facts giving rise to these petitions. It may be sufficient to note that the predecessor-in-title of petitioner No. 1 in Special Civil Application No. 2091 of 1996 (the first petition for convenience) and the petitioner of Special Civil Application No. 5343 of 1996 (the second petition for convenience) filed their separate declarations in the prescribed form under sec. 6(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to their respective holdings within the urban agglomeration of Ahmedabad. They were duly processed by respondent No. 1 in each petition. A common order was passed on 29th October 1993 declaring the holding of the deceased land-holder of the first petition to be in excess of the ceiling limit by 4372.50 square meters and that of the petitioner of the second petition by 17245 square meters. Its copy is at Annexure A to each petition. A combined appeal was filed by the petitioners of both these petitions before respondent No. 2 in each petition under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-13 of 1994. By the order passed on 16th January 1996 in the aforesaid appeal, respondent No. 2 in each petition dismissed it. Its copy is at Annexure B to each petition. The aggrieved petitioners have thereupon approached this Court by means of their respective petitions under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to each petition as affirmed in appeal by the appellate order at Annexure B to each petition.

3. The grievance voiced by and on behalf of learned Advocate Shri P.M. Bhatt for the petitioners in each case is that the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465 has not been applied in the instant case. As rightly submitted by

learned Assistant Government Pleader Shri Bhatt for the respondents, the applicability of the aforesaid binding ruling would require ascertainment of three factual positions, namely, whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence on the date of coming into force of the Act, what the situation of the lands was therein if such master plan was in existence and whether or not agricultural operations were in fact carried on therein on the date of coming into force of the Act. It appears that the attention of respondent No.2 was drawn to the aforesaid binding ruling of the Supreme Court by and on behalf of the petitioners of the first petition in the application given on their behalf in the appellate proceeding. Its copy is at Annexure D to this petition. It is unfortunate that respondent No.2 has not applied its mind to this aspect of the case. The impugned appellate order at Annexure B to each petition can therefore be said to be suffering from the vice of non-application of mind on the part of respondent No.2.

4. Since the applicability of the aforesaid binding ruling of the Supreme Court would require ascertainment of the factual positions set out hereinabove, it would be desirable to send the matter back to respondent No. 1 rather than send it to respondent No. 2 for the purpose. The impugned orders at Annexures A and B to each petition will have therefore to be quashed and set aside. The matters should be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid factual positions. It would be open to the petitioners to raise their contention that the properties in the hands of the respective land-holders were joint Hindu family properties.

5. Before parting, it may be noted that the deceased land-holder in the first petition and the petitioner of the second petition appear to have made their respective applications for exemption under sec. 20(1) of the Act. It transpires from the material on record that both their applications were pending and have remained undisposed of. This judgment of mine shall not preclude the State Government from deciding the fate of exemption applications.

6. In the result, both these petitions are accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.1 in each petition) on 29th October 1993 at Annexure A to each petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad

on 16th January 1996 in Appeal No. Ahmedabad-13 of 1994 at Annexure B to each petition is quashed and set aside. The matters are remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute in each case with no order as to costs.
